

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CORNELIUS WARE,

Petitioner,

Civil No. 2:19-cv-13602

Hon. Sean F. Cox

JOHN DAVIDS,

Respondent.

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ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT
[ECF No. 11]

This matter is before the Court on Michigan prisoner Cornelius Ware's motion to alter or amend judgment. On July 6, 2022, the Court issued an opinion and order denying Petitioner's 28 U.S.C. § 2254 habeas corpus petition, finding that his four claims were without merit. (ECF No. 9.) Petitioner's motion simply restates the arguments in support of his claims without addressing the reasons they were rejected by the Court. (ECF No. 11.)

The decision to grant a motion to alter or amend judgment under Fed. R. Civ. P. 59 is discretionary with the district court. *Davis by Davis v. Jellico Cmty. Hosp., Inc.*, 912 F.2d 129, 132 (6th Cir. 1990). A motion to alter or amend judgment will generally be granted if the district court made a clear error of law, if there is an intervening change in the controlling law, or if granting the motion will prevent manifest injustice. *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999). "A Rule 59 motion 'may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.'" *Brumley v. United Parcel Serv., Inc.*, 909 F.3d 834, 841 (6th Cir. 2018)(quoting *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486, n. 5 (2008)(additional quotation omitted)). A Rule 59(e) motion to alter or amend

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judgment is not a substitute for an appeal. *See Johnson v. Henderson*, 229 F. Supp. 2d 793, 796 (N.D. Ohio 2002).

Petitioner's lead habeas claim asserted that his trial counsel was ineffective for failing to present alibi witnesses at trial. As explained in detail in the opinion denying the petition, Petitioner's appellate attorney—who first raised the claim—was unable to secure any affidavits from any of the purported witnesses. (ECF No. 9, PageID.1572-74.) The state courts reasonably rejected the claim because Petitioner failed to support it with any evidence in his state court appeal. Petitioner's present motion simply restates the claim without addressing the Court's analysis. The same holds true with Petitioner's other arguments. He restates his Fourth Amendment and sentencing claims without presenting any argument as to why the Court's rejection of those claims involved a clear error of law, that there has been some intervening change in controlling law, or that a different result is necessary to prevent manifest injustice. Accordingly, Petitioner fails to demonstrate entitlement to an order altering or amending the judgment.

IT IS HEREBY ORDERED that Petitioner's motion to alter or amend judgment is therefore **DENIED**.

Dated: March 20, 2023

s/Sean F. Cox

Sean F. Cox
U. S. District Judge